

PRICE OKAMOTO HIMENO & LUM

WARREN PRICE III 1212

ROBERT A. MARKS 2163

707 Richards Street, Suite 728

Honolulu, Hawaii 96813

Phone: 808.538.1113

Fax: 808.533.0549

E-mail: ram@pohlhawaii.com

SIMON KLEVANSKY 3217-0

ALIKA L. PIPER 6949-0

CARISA LIMA KA'ALA HEE 7372-0

Suite 1400, Fort Street Tower

745 Fort Street

Honolulu, Hawaii 96813

Phone: (808) 524-0155

Fax: (808) 531-6963

E-mail: sklevansky@ggik.com

apiper@ggik.com;

kaalahee@ggik.com

Attorneys for Defendants, Counterclaimants  
and Third-Party Plaintiffs KG HOLDINGS,  
LLC, KIAHUNA GOLF CLUB, LLC,  
KG KAUAI DEVELOPMENT, LLC,  
PUKALANI GOLF CLUB, LLC,  
KG MAUI DEVELOPMENT, LLC,  
MILILANI GOLF CLUB, LLC,  
QK HOTEL, LLC, AND OR HOTEL, LLC,

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD., a  
Japanese corporation,

Plaintiff,

vs.

CV 04-00124 ACK-BMK  
CONSOLIDATED CASES

REPLY MEMORANDUM IN  
SUPPORT OF MOTION FOR  
PRETRIAL CONFERENCE AND

QK HOTEL, LLC, a Hawaii limited liability company, KG HOLDINGS LLC, a Hawaii limited liability company, FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI, QK HOTEL, LLC, a Hawaii limited liability company and KG HOLDINGS LLC, a Hawaii limited liability company,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (KAUAI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawaii corporation, SPORTS SHINKO (MILILANI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (PUKALANI) CO., LTD., a Hawaii corporation, and SPORTS SHINKO (HAWAII) CO., LTD., a Hawaii corporation and SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawaii corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai'i corporation; and SPORTS SHINKO

TO MODIFY STIPULATED PROTECTIVE ORDER;  
DECLARATION OF ROBERT A. MARKS; EXHIBIT A;  
CERTIFICATE OF SERVICE

HEARING:

DATE: February 2, 2007

TIME: 1:45 pm

JUDGE: Hon. Barry M. Kurren

(WAIKIKI) CORPORATION, a Hawai'i corporation,

Third-Party Defendants /  
Counterclaimants,

vs.

QK HOTEL, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K. MUKAI,

Third-Party Counterclaim  
Defendants

---

SPORTS SHINKO (USA) CO., LTD.,  
a Delaware corporation,

Plaintiff,

vs.

PUKALANI GOLF CLUB, LLC, a Hawaii limited liability company and KG MAUI DEVELOPMENT, LLC, a Hawaii limited liability company, KG HOLDINGS LLC, a Hawaii limited liability company, FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI, PUKALANI GOLF CLUB, LLC, a Hawaii limited liability company and KG MAUI DEVELOPMENT, LLC, a Hawaii limited liability company and KG HOLDINGS LLC, a Hawaii limited

CV 04-00125 ACK-BMK

liability company

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (KAUAI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawaii corporation, SPORTS SHINKO (MILILANI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (PUKALANI) CO., LTD., a Hawaii corporation, and SPORTS SHINKO (HAWAII) CO., LTD., a Hawaii corporation and SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawaii corporation,

Third-Party Defendants,

and

SPORTS SHINKO CO., LTD., a Japanese corporation; SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; and SPORTS SHINKO (PUKALANI) CO., LTD., a Hawai'i corporation,

Third-Party Defendants /  
Counterclaimants,

vs.

PUKALANI GOLF CLUB, LLC, a Hawai'i limited liability company; KG MAUI DEVELOPMENT, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K.

MUKAI,

Third-Party Counterclaim  
Defendants.

---

SPORTS SHINKO (USA) CO., LTD.,  
a Delaware corporation,

Plaintiff,

vs.

KIAHUNA GOLF CLUB, LLC, a  
Hawaii limited liability company; KG  
KAUAI DEVELOPMENT, LLC, a  
Hawaii limited liability company;  
PUKALANI GOLF CLUB, LLC, a  
Hawaii limited liability company; KG  
MAUI DEVELOPMENT, LLC, a  
Hawaii limited liability company;  
MILILANI GOLF CLUB, LLC, a  
Hawaii limited liability company; QK  
HOTEL, LLC, a Hawaii limited  
liability company; OR HOTEL, LLC,  
a Hawaii limited liability company;  
KG HOLDINGS, LLC, a Hawaii  
limited liability company,  
FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI, KIAHUNA  
GOLF CLUB, LLC, a Hawaii limited  
liability company; KG KAUAI  
DEVELOPMENT, LLC, a Hawaii  
limited liability company;  
PUKALANI GOLF CLUB, LLC, a  
Hawaii limited liability company; KG  
MAUI DEVELOPMENT, LLC, a

CV 04-00126 ACK-BMK

Hawaii limited liability company;  
MILILANI GOLF CLUB, LLC, a  
Hawaii limited liability company; QK  
HOTEL, LLC, a Hawaii limited  
liability company; OR HOTEL, LLC,  
a Hawaii limited liability company;  
and KG HOLDINGS, LLC, a Hawaii  
limited liability company,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (KAUAI) CO.,  
LTD., a Hawaii corporation, SPORTS  
SHINKO (WAIKIKI)  
CORPORATION, a Hawaii  
corporation, SPORTS SHINKO  
(MILILANI) CO., LTD., a Hawaii  
corporation, SPORTS SHINKO  
(PUKALANI) CO., LTD., a Hawaii  
corporation, SPORTS SHINKO  
(HAWAII) CO., LTD., a Hawaii  
corporation and SPORTS SHINKO  
RESORT HOTEL CORPORATION,  
a Hawaii corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO.,  
LTD., a Hawai'i corporation and  
SPORTS SHINKO (KAUAI) CO.,  
LTD., a Hawai'i corporation,

Third-Party Defendants /  
Counterclaimants,

vs.

KIAHUNA GOLF CLUB, LLC, a

Hawaii limited liability company; KG KAUAI DEVELOPMENT, LLC, a Hawaii'i limited liability company; PUKALANI GOLF CLUB, LLC, a Hawaii'i limited liability company; KG MAUI DEVELOPMENT, LLC, a Hawaii'i limited liability company; QK HOTEL, LLC, a Hawaii'i limited liability company; OR HOTEL, LLC, a Hawaii'i limited liability company; KG HOLDINGS, LLC, a Hawaii'i limited liability company; and FRANKLIN K. MUKAI,

Third-Party Counterclaim  
Defendants.

---

SPORTS SHINKO CO., LTD., a  
Japanese corporation,

Plaintiff,

vs.

OR HOTEL, LLC, a Hawaii limited liability company, KG HOLDINGS, LLC, a Hawaii limited liability company, FRANKLIN K. MUKAI,

Defendants,

and

FRANKLIN K. MUKAI, OR HOTEL, LLC, a Hawaii limited liability company and KG HOLDINGS, LLC, a Hawaii limited liability company,

Third-Party Plaintiffs,

vs.

CV 04-00127 ACK-BMK

SPORTS SHINKO (KAUAI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawaii corporation, SPORTS SHINKO (MILILANI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (PUKALANI) CO., LTD., a Hawaii corporation, SPORTS SHINKO (HAWAII) CO., LTD., a Hawaii corporation and SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawaii corporation,

Third-Party Defendants,

and

SPORTS SHINKO (HAWAII) CO., LTD., a Hawai'i corporation; SPORTS SHINKO RESORT HOTEL CORPORATION, a Hawai'i corporation; and SPORTS SHINKO (WAIKIKI) CORPORATION, a Hawai'i corporation,

Third-Party Defendants /  
Counterclaimants,

vs.

OR HOTEL, LLC, a Hawai'i limited liability company; KG HOLDINGS, LLC, a Hawai'i limited liability company; and FRANKLIN K. MUKAI,

Third-Party Counterclaim  
Defendants.

---



SPORTS SHINKO (USA) CO., LTD.,  
a Delaware corporation,

Plaintiff,

vs.

MILILANI GOLF CLUB, LLC, a  
Hawaii limited liability company; KG  
HOLDINGS LLC, a Hawaii limited  
liability company, FRANKLIN K.  
MUKAI,

Defendants,

and

FRANKLIN K. MUKAI, MILILANI  
GOLF CLUB, LLC, a Hawaii limited  
liability company and KG  
HOLDINGS LLC, a Hawaii limited  
liability company,

Third-Party Plaintiffs,

vs.

SPORTS SHINKO (KAUAI) CO.,  
LTD., a Hawaii corporation, SPORTS  
SHINKO (WAIKIKI)  
CORPORATION, a Hawaii  
corporation, SPORTS SHINKO  
(MILILANI) CO., LTD., a Hawaii  
corporation, SPORTS SHINKO  
(PUKALANI) CO., LTD., a Hawaii  
corporation, SPORTS SHINKO  
(HAWAII) CO., LTD., a Hawaii  
corporation and SPORTS SHINKO  
RESORT HOTEL CORPORATION,  
a Hawaii corporation,

Third-Party Defendants,

CV 04-00128 ACK-BMK

and

SPORTS SHINKO CO., LTD., a  
Japan Corporation, SPOORTS  
SHINKO (PUKALANI) CO., LTD., a  
Hawaii corporation, SPORTS  
SHINKO (HAWAII) CO., LTD., a  
Hawaii corporation, SPORTS  
SHINKO (MILILANI) CO., LTD., a  
Hawaii corporation,

Third-Party Defendants/  
Counterclaimants,

vs.

MILILANI GOLF CLUB, LLC, a  
Hawaii limited liability company; KG  
HOLDINGS, LLC, a Hawaii limited  
liability company, FRANKLIN K.  
MUKAI,

Third-Party Counterclaim  
Defendants.

---

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR  
PRETRIAL CONFERENCE AND TO  
MODIFY STIPULATED PROTECTIVE ORDER

Defendants and Third-Party Plaintiffs KG Holdings, LLC, QK Hotel, LLC,  
OR Hotel, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani  
Golf Club, LLC, Kiahuna Golf Club, LLC and KG Kauai Development, LLC  
(collectively, “KG”) hereby reply to the Plaintiffs and Third Party Defendants  
Sports Shinko Companies’ (collectively, “SS”) January 26, 2007 Memorandum In

## Opposition to Motion For Pretrial Conference And To Modify Stipulated Protective Order.

### I. MODIFICATION OF STIPULATED PROTECTIVE ORDER

KG accepts SS's proposal that, going forward, KG need only "forward copies of any confidential exhibits to SS and request SS move to seal them after any motion was finalized." SS Mem. Opp. at 14. This is a viable conceptual solution to the problem presented, as it shifts the burden of filing under seal to the party asserting confidentiality. This solution should be memorialized in an amendment to the SPO, and we look forward to a discussion of the new language at the pretrial conference on February 2.<sup>1</sup>

KG expresses its frustration, however, that SS would not offer any solutions to this longstanding problem, exacerbated by Kamakana, until KG took the trouble to bring the issue to the Court. This is not the first time SS has refused to engage in constructive problem solving until after KG was forced to file a motion. See, e.g., Ex Parte Motion For Order To Show Cause Whether To Seal Exhibits 6, 7, 8, 10, 11 and 12 To Motion To Dismiss CV. NOS. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK For Lack Of Subject Matter Jurisdiction, filed December 20, 2006.

---

<sup>1</sup> I am authorized to represent to the Court that counsel for Mr. Mukai concurs with this conceptual solution.

We truly regret taking up the Court's valuable time on matters such as these that ought to be resolved without judicial intervention.

## II. PROPOSED AGENDA FOR FEBRUARY 2 PRETRIAL CONFERENCE

There are several pending items that KG proposes to discuss at the pretrial conference on February 2. In addition to the amendment to the SPO, KG would appreciate an opportunity to discuss the following issues with the Court and counsel:

1. The issues set forth in Exhibit A hereto (except for the matter related to the state court litigation). Exhibit A describes in detail the many matters that have been pending for months or even years, and as to which we are still awaiting SS's response.

2. The finalization of a pretrial calendar. The dispute about the pretrial calendar is limited to the deadline to add additional parties. KG has noticed the deposition of SS-Japan to begin on February 22 and for days thereafter. If this deposition proceeds as and when noticed, the questions are properly answered, and the requested documents are produced and identified, KG expects to be able to identify additional parties by May 30.

3. An order regarding the use of a truncated case caption for future filings. The caption now runs 10 pages and is likely to get longer.

### III. FINAL COMMENT

This reply memorandum comes at a very busy time, as KG's reply to a dispositive motion in three of these five consolidated cases is due tomorrow. Therefore, this memorandum is unusually abbreviated. We also acknowledge that this memorandum is late, as was SS's memorandum in opposition, and we ask for the Court's indulgence.

DATED: Honolulu, Hawaii, January 31, 2007.

/s/ Robert A. Marks

---

WARREN PRICE III  
ROBERT A. MARKS  
SIMON KLEVANSKY  
ALIKA L. PIPER  
CARISA LIMA KA'ALA HEE

Attorneys for Defendants  
KG Holdings, LLC, QK Hotel, LLC, OR  
Hotel, LLC, Pukalani Golf Club, LLC, KG  
Maui Development, LLC, Mililani Golf  
Club, LLC, Kiahuna Golf Club, LLC and  
KG Kauai Development, LLC